

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
ACTING BY ATTORNEY GENERAL	:	
THOMAS W. CORBETT, JR.	:	OF ERIE COUNTY, PENNSYLVANIA
	:	
PLAINTIFF	:	CIVIL DIVISION - IN EQUITY
	:	
VS.	:	
	:	
ANDY ONORATO, Individually and d/b/a	:	No. _____
ONORATO BROTHERS GENERAL	:	
CONTRACTORS	:	
1659 WEST 24 <sup>TH</sup> STREET	:	
ERIE, PA 16502,	:	
	:	
DEFENDANT	:	

**COMPLAINT IN EQUITY  
AND PETITION FOR PERMANENT INJUNCTION/**

AND NOW comes the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, and brings this action pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, as amended and reenacted by the Act of November 24, 1976, P.L. 1160, No. 260, and the Act of June 25, 1997, P.L. 287, No. 27, 73 P.S. §§ 201-1 - 201-9.3 (“Consumer Protection Law”), and avers against the Defendant Andy Onorato d/b/a Onorato Brothers (“Onorato”) the following:

**PARTIES**

1. The Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection (“Commonwealth”), on behalf of the citizens of Pennsylvania.

2. Defendant, Andy Onorato, is an individual resident of the Commonwealth of Pennsylvania.

3. Defendant does business in Pennsylvania using the name “Onorato Brothers General Contractors” (“Onorato”) with a principal place of business located at 1659 West 24<sup>th</sup> Street, Erie, Erie County, PA 16502.

4. Defendant is engaged in trade and commerce within the Commonwealth of Pennsylvania by contracting with Pennsylvania consumers for home improvement services including basement waterproofing services and driveway (concrete) installations.

5. The Attorney General believes that the public interest is served by seeking before this Court a permanent injunction to restrain the acts, methods and practices set forth herein.

6. At all times relevant hereto, the unlawful acts, methods and practices complained of herein have been willfully used by the Defendant Onorato.

### **BUSINESS PRACTICES**

7. The Commonwealth avers that, at times relevant to the instant action, Onorato contracted with Pennsylvania consumers to provide home improvement services including basement waterproofing and driveway (concrete) installation services.

8. The Commonwealth avers that, at times relevant to the instant action, Onorato entered into contracts with consumers for the provision of said home improvement services for which the contract price exceeded twenty-five (\$25) dollars following, and as a result of, contact with involved consumers at their home.

9. The Commonwealth avers that, at times relevant to the instant action, Onorato has provided the above-referenced services to consumers pursuant to written contracts.

10. The Commonwealth avers that, at times relevant to the instant action, all of the written contracts under which Onorato provided the above-mentioned services to consumers failed to provide the required notice of the consumers’ right to cancel the contract.

11. Based upon consumer complaints received, Onorato has performed contracted-for services in a shoddy or incomplete manner, has represented to consumers that he would return to complete or correct the complained-of work and had either failed to return or failed to satisfactorily correct or complete the complained-of work.

**COUNT I**  
**Violation of Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1, et seq.**  
**[Shoddy and Incomplete Work]**

12. The averments set forth above are incorporated as though fully set forth below.

13. Three consumers have filed complaints with the Bureau related to Onorato's performance of contracted-for services in a shoddy or incomplete manner.

14. Robert and Cynthia Wise, who contracted with Onorato for basement waterproofing services at their home at a cost of \$2,900 at their home on June 17, 2002, allege that the work was completed in a shoddy and ineffective manner in that the consumers continued to experience water puddles and wet walls, mold growth and peeling paint in their basement after Onorato performed the so-called waterproofing. Despite repeated requests, Onorato failed to respond to the Wises' requests to appear at their home and correct the waterproofing work.

15. The written document under which Onorato provided services to Robert and Cynthia Wise included a representation that the work would be "fully guaranteed for life of structure." A true and correct copy of that document is attached hereto as "Exhibit A."

16. Jerilyn Justice, who contracted with Onorato for basement waterproofing services at her home at a cost of \$3,200, alleges that the work was shoddy and ineffective and that the consumer continues to experience water leaking or seeping into her basement after Onorato performed the so-called water-proofing. Onorato, during the course of performing work at the consumer's home

caused additional damage to the premises including damage to a basement window and broken legs on a workbench. Despite repeated requests, Onorato failed to respond to Justice's requests to appear at her home and correct the waterproofing work.

17. The written document under which Onorato provided services to Jerilyn Justice included a representation that the work would be "fully guaranteed for life of structure." A true and correct copy of that document is attached hereto as "Exhibit B."

18. Pamela S. Hall, who contracted with Onorato for basement waterproofing services at her home at a total cost of \$4,400, alleges that the work was shoddy and ineffective and that the consumer continued to experience water leaking or seeping into her basement after Onorato performed the so-called water-proofing. Further, consumer alleged that Onorato failed to complete corrective work needed to render the waterproofing effective.

19. The written document under which Onorato provided services to Pamela S. Hall included a representation that the work would be "fully guaranteed for life of structure." A true and correct copy of that document is attached hereto as "Exhibit C."

20. Joseph W. Patora, who contracted with Onorato for the installation of a concrete driveway and steps, alleges that portions of the driveway installed by Onorato did not meet consumer's expectations in that there were areas that were "discolored" and had "divots." Onorato agreed to return to address or correct the problems but, despite repeated requests from consumer, has failed to return to address or correct the discoloration and divots. A true and correct copy of the document under which Onorato provided services to Joseph W. Patora is attached hereto as "Exhibit D."

21. The above mentioned methods, acts and practices constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Consumer Protection Law, 73 P.S. §201-3, as defined by §201-2(4) as follows:

- (v) Representing that goods or services have sponsorship, approvals, characteristics, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (vii) Representing that goods are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another;
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.

**COUNT II**  
**Violation of PA Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-7**  
**[Failure to Provide Notice of Rights of Rescission]**

22. The averments set forth above are incorporated as though fully set forth below.

23. All of the documents utilized in the consumer transactions set forth at Paragraphs 14 through 18 above failed to set forth the three day notice of rights of cancellation.

24. The documents used in the Wise transaction and in the Justice transaction are titled “Proposal” but, on its face, each document states that it sets forth the terms of the contract upon execution by the respective involved consumers.

25. The document used in the Patora transaction was title “Quotation” but appears to set forth the work to be done and the price paid for that work.

26. The Bureau contends that each such document, operates as the contract for the respective consumer transaction, and as such, should have included the required notice of rights of rescission pursuant to 73 P.S. §201-7.

27. The above mentioned methods, acts and practices, namely failing to utilize contracts, receipts and disclosure documents which provide consumers with the required three day notice of cancellation, constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Consumer Protection Law, 73 P.S. §201-7.

**COUNT III**  
**Violation of PA Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-8**  
**[Failure to Comply With Previous Assurance of Voluntary Compliance]**

28. The averments set forth above are incorporated as though fully set forth below.

29. On May 11, 2001, the Bureau of Consumer Protection and Onorato entered into an Assurance of Voluntary Compliance (“AVC”) pursuant to the Consumer Protection Law at 73 P.S.

§201-5, under which Onorato specifically agreed to comply with the Consumer Protection Law requirement at Section 201-7 to provide consumers with notice of their right of rescission.

30. That AVC was filed with the Erie County Court of Common Pleas at Docket No. 60026 Equity 2001 on May 23, 2001. A true and correct copy of the AVC is attached as “Exhibit D.”

31. The Bureau avers that, since the filing of the above-mentioned AVC, Onorato has failed or refused to utilize contracts which include the required notice of rights of rescission when contracting with PA consumers for home improvement services at a contract price of \$25 or more following contact with involved consumers in their homes.

32. The Bureau avers, based upon Onorato’s representations, that since the filing of the AVC, Onorato has contracted with an unknown number of PA consumers in addition to the three consumers identified above.

33. The Bureau avers that none of the contracts entered between Onorato and consumers after the May 23, 2001 AVC include the notice of rights of rescission required by the Consumer Protection Law, 73 P.S. 201-7.

34. Pennsylvania consumers have been harmed by said violations, and will continue to suffer harm, unless such deceptive acts and practices are permanently enjoined by this Court.

### **Prayer for Relief**

WHEREFORE, the Commonwealth respectfully requests that the Court find in favor of the Commonwealth and enter an order against the Defendant Onorato as follows:

1. Enjoining Onorato from engaging in the business of contracting for provision of home improvement services until such time as Onorato clearly demonstrates that Onorato contracts or other documents that operate as a contract upon execution by consumers comply with the requirements of

the Consumer Protection Law and provide notice of the consumer's right of rescission as required by 73 P.S. §201-7.

2. Permanently enjoining Onorato from engaging in the acts or practices alleged in this Complaint or any other acts and practices which violate the Consumer Protection Law; and

3. Permanently enjoining Onorato from engaging in the acts or practices alleged in this Complaint or any other acts and practices which violate the Assurance of Voluntary Compliance that was filed May 23, 2001; and

4. Directing Onorato to pay to the Commonwealth of Pennsylvania civil penalties in the amount of \$1,000 for each and every violation of the Consumer Protection Law and \$3,000 for each such violation in which the affected consumer is age 60 or older; and

5. Directing Onorato to pay to the Commonwealth of Pennsylvania civil penalties in the amount of \$5,000 for each and every violation of the Assurance of Voluntary Compliance filed May 23, 2001; and

6. Directing Onorato to pay to the Commonwealth of Pennsylvania the costs of investigation, including attorney fees, incurred in pursuit of this enforcement action; and

7. Declaring that the contracts between Onorato and the consumers identified herein shall be rescinded; and

8. Directing that Onorato make restitution to consumers identified herein in accordance with the Consumer Protection Law by refunding the contract fees paid to Onorato pursuant to each respective contract; and

9. Granting such other relief as the Court deems necessary or appropriate.



Dated: \_\_\_\_\_

RESPECTFULLY SUBMITTED:

Thomas W. Corbett, Jr.  
Attorney General

Frank T. Donaghue  
Chief Deputy Attorney General  
Director, Bureau of Consumer Protection

By: \_\_\_\_\_  
Leslie M. Grey  
Deputy Attorney General

Attorneys for Plaintiff,  
Commonwealth of Pennsylvania  
Office of Attorney General  
Bureau of Consumer Protection  
1001 State Street, Suite 1009  
Erie, PA 16501